

## **REMARKS/ARGUMENTS**

The Office Action has been carefully considered. Claims 1, 25, and 49 are canceled. Claims 2, 7, 10-11, 15, 17-23, 26, 31, 34-35, 39, 41-47, 50, and 53-55 are currently amended. In the Office Action, claims were rejected in the following manner.

1. Claims 1-9, 11-19, 21-33, 35-43, and 44-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Blasko et al's US Publication No. 2002/0083435 A1 (hereinafter "*Blasko*"), in view of Swix et al's US Patent No. 6,718,551 B1 (hereinafter "*Swix*"), in view of Kawai's US Patent No. 7,200,853 B2 (hereinafter "*Kawai*"), and in further view of Aharoni's US Patent No. 6,014,694 (hereinafter "*Aharoni*").
2. Claims 10, 20, 34 and 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Blasko*, in view of *Swix*, in view of *Kawai*, in view of *Aharoni*, and in further view of Brown's US Patent No. 6,950,623 B2 (hereinafter "*Brown*").

### ***35 U.S.C. § 103(a) Rejections***

#### **Claims 2-9, 11-19, 21-24, 26-33, 35-43, 44-48, and 50-52**

Claims 2-9, 11-19, 21-24, 26-33, 35-43, 44-48, and 50-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Blasko*, in view of *Swix*, *Kawai*, and *Aharoni*. Applicants respectfully submit that the Office Action has failed to state a *prima facie* case of obviousness at least because no combination of the cited art teaches or even suggests all elements recited in Claims 2-9, 11-19, 21-24, 26-33, 35-43, 44-48, and 50-52.

#### **The cited art does not teach or suggest asynchronously retrieving a plurality of advertisements, via said same communication channel contemporaneous with receiving, via said same communication channel, and rendering of said streaming program.**

Independent Claim 7 recites a method in a client system comprising:

providing an advertisement publisher with a profile of the user of client system at a time prior to streaming of a program via a communication channel;

**asynchronously retrieving a plurality of advertisements, via said same communication channel**, in an adaptive manner to minimize interference with a discernable quality, from the client system's perspective, of the **contemporaneous receiving, via said same communication channel, and rendering of said streaming program** on said client system;

asynchronously caching, at a client cache, said plurality of advertisements of various time lengths contemporaneous with streaming of said streaming program; and

causing one or more of said cached advertisements to be synchronously rendered during an advertisement time slot of a streaming program, replacing advertisements, if any, included in the streaming program for the advertisement time slot.

Thus, as claimed, both a streaming program and a plurality of advertisements are contemporaneously received via the same communication channel (i.e., the streaming program and the advertisements share the same communication channel), but the advertisements are adaptively and asynchronously retrieved to minimize a specified kind of interference with contemporaneously receiving and rendering the streaming program via the shared communication channel.

Applicants respectfully submit that the proposed combinations of art simply do not teach or even suggest “asynchronously retrieving a plurality of advertisements, via said same communication channel, in an adaptive manner to minimize interference with a discernable quality... of the contemporaneous receiving, via said same communication channel, and rendering of said streaming program on said client system,” as claimed.

Indeed, as admitted in the Office Action at 2, *Kawai* and *Blasko* teach that ads are “received in an **ad-specific channel**...” Thus, according to the Office Action’s own reasoning, *Kawai* and *Blasko* teach away from (and are directly contrary to) “asynchronously retrieving a plurality of advertisements, via said **same communication channel**” contemporaneous with “receiving, via said **same communication channel**, and rendering of said streaming program,” as claimed. Similarly, *Swix* also teaches away from this element of Claim 7. *See, e.g.*, Col. 12 lines 63-66 (“Broadcast server 105 delivers the continuous broadcast program in one channel and delivers other programs and advertisements in other channels.”). Adding *Aharoni* to the proposed combination does not remedy any of these defects in *Blasko*, *Swix*, and *Kawai*, as *Aharoni* teaches nothing regarding contemporaneously receiving advertisements and a streaming program via the same communication channel.

Accordingly, Applicants respectfully submit that the proposed combination of art not only fails to teach or even suggest, but also directly teaches away from “asynchronously retrieving a plurality of advertisements, via said **same communication channel**” contemporaneous with “receiving, via said **same communication channel**, and rendering of said streaming program,” as claimed.

**The cited art does not teach or suggest adaptively and asynchronously retrieving advertisements to minimize quality interference with contemporaneous receiving a streaming program via said same communication channel.**

Applicants respectfully submit that no combination of the cited art teaches or even suggests, “**asynchronously retrieving a plurality of advertisements**, via said same communication channel, **in an adaptive manner to minimize interference with a discernable quality**... of the **contemporaneous receiving**, via said same communication channel, and rendering of said streaming program,” as claimed in Claim 7.

To paraphrase, this element of Claim 7 involves receiving two sets of data (a streaming program and a plurality of advertisements) via a single communication channel, such that asynchronously retrieving the advertisements adapts to minimize interference with receiving and rendering the streaming program. Applicants respectfully submit that *Blasko* in view of *Swix*, *Kawai*, and *Aharoni* simply does not teach or even suggest this element.

The Office Action correctly states that *Blasko*, in view of *Swix* and *Kawai* fails to teach this element, but Applicants respectfully submit that adding *Aharoni* to the proposed combination fails to remedy the shortcomings of *Blasko*, in view of *Swix* and *Kawai*.

*Aharoni* is directed to distributing media encoded with a layered codec, such that “[b]andwidth adjustability is provided by offering a trade off between video resolution, frame rate and individual frame quality.” See Abstract. Thus, when bandwidth is available, a client may receive 30 frames per second of 640x480 video, but if bandwidth becomes constrained, the client may receive only 15 frames per second of 320x240 video. See, e.g., Col. 7 lines 1-6. In other words, *Aharoni* teaches methods of **interfering** with a discernable quality, from a client’s perspective, of rendering a single streaming program to adapt the stream to changing bandwidth conditions.

The Office Action states that *Aharoni*, when combined with *Blasko*, *Swix*, and *Kawai*, would enable “transmission of video data to dynamically adapt to changing bandwidths.” Even if this assertion were true, Claim 7 is not directed to enabling transmission of video data (e.g., a streaming program) to dynamically adapt to changing bandwidth, especially when the dynamic adaptation involves **interfering with a discernable quality of the video data**, as disclosed in *Aharoni*.

Moreover, *Blasko*, in view of *Swix*, *Kawai*, and *Aharoni* teaches nothing related to methods of asynchronously retrieving one set of data (advertisements), contemporaneous with receiving a second set of data (streaming program), such that retrieving the first set of data in an

adaptive manner minimizes interference with the discernable rendering quality of the second set of data, as claimed. Put another way, Claim 7 claims that retrieving one set of data (advertisements) adapts to minimize interference with receiving a second set of data (streaming program). On the other hand, the proposed combination at most discloses that one set of data (a layered video stream) adapts to available bandwidth (i.e., its quality varies directly with bandwidth).

Thus, neither *Blasko*, *Swix*, *Kawai*, nor *Aharoni*, either alone or in any possible combination, teaches or even suggests “**asynchronously retrieving a plurality of advertisements**, via said same communication channel, **in an adaptive manner to minimize interference with a discernable quality...** of the **contemporaneous receiving**, via said same communication channel, and rendering of said streaming program,” as claimed in Claim 7.

**The proposed combination is based on improper hindsight reasoning.**

Applicants further respectfully submit that the Office Action has failed to state a *prima facie* case that Claim 7 is obvious because only knowledge gleaned from Applicant’s disclosure could have lead one of ordinary skill in the art to make the proposed combination.

It is well established that “[a]ny judgement on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning...” *In re McLaughlin* 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971).

However, it is equally well established that an obviousness rejection is proper only so long as it “does not include knowledge gleaned only from applicant’s disclosure....” *Id.* See also MPEP § 2142 (unequivocally stating that “impermissible hindsight **must** be avoided and the legal conclusion **must** be reached on the basis of the facts gleaned from the prior art”). Thus, the MPEP is in accord with settled case law that it remains strictly forbidden to “use hindsight reconstruction to pick and choose among isolated disclosures in the prior art” to determine that the pending claims are obvious. See *Ecolochem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 56 U.S.P.Q.2d 1065 (2000).

Applicants respectfully submit that the only way to assert that the pending claims are obvious would be to “engage in a hindsight reconstruction of the claimed invention, using the applicant’s structure as a template and selecting elements from references to fill the gaps.” See *In re Gorman*, 993 F.2d 982, 18 U.S.P.Q.2d 1885 (1991). Applicants respectfully submit that only the blueprint provided by Applicants’ claims would lead one of ordinary skill in the

art to pick and choose from among the countless isolated elements from *Blasko*, *Swix*, *Kawai*, and *Aharoni* in the manner proposed by the Office Action. As such hindsight reconstruction is inappropriate; Applicants respectfully submit that for this additional reason, the Office Action has failed to state a prima facie case of obviousness for Claim 7.

For at least the reasons discussed above, Applicants respectfully submit that the Office Action has failed to state a *prima facie* case that Claim 7 is obvious in view of the cited art.

Independent Claims 31 and 50 recite similar elements to those of Claim 7 and are allowable at least by similar reasoning. Dependent Claims 2-6, 8-9, 11-19, 21-24, 26-30, 32-33, 35-43, 44-48, and 51-52 are allowable at least by dependency.

**Claims 10, 20, 34 and 44**

Claims 10, 20, 34 and 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Blasko*, in view of *Swix*, in view of *Kawai*, in view of *Aharoni*, and in further view of *Brown*. As *Brown* fails to remedy any of the defects in *Blasko*, *Swix*, *Kawai*, and *Aharoni*, as discussed above, Applicants respectfully submit that Claims 10, 20, 34 and 44 are allowable by dependency and/or by similar reasoning.

### CONCLUSION

For at least the reasons above, Applicants respectfully submit that all pending claims are allowable and request that the Examiner permit these claims to proceed to issuance. Although additional arguments are believed to exist for distinguishing the cited documents, the arguments presented are believed sufficient to address the Examiner's rejections. Likewise, failure of the Applicants to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead, it is believed that the Examiner's positions are rendered moot by the foregoing arguments, and it is therefore not believed necessary to respond to every position taken by the Examiner with which Applicants do not agree.

The Examiner is respectfully requested to contact the undersigned at the telephone number below if there are any remaining questions regarding this application.

We believe the appropriate fees accompany this transmission. If, however, insufficient fee payment or fee overpayment occurs, the amount may be withdrawn or deposited from/to AXIOS Law Group's deposit account. The deposit account number is 50-4051.

Respectfully submitted,

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